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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2187 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

PUNJAB NATIONAL BANK

Versus

COMMISSIONER OF PAYMENTS

Appearance:

MR AC GANDHI for Petitioner
NOTICE SERVED for Respondent No. 1
MR BR GUPTA for Respondent No. 2
NANAVATI & NANAVATI for Respondent No. 3
NANAVATI ASSOCIATES for Respondent No. 4

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 25.8.99

CAV JUDGEMENT

This petition has been filed for quashing
the orders dated 31.8.78 of the Assistant Commissioner of
Payments in Claim petition no.1 of 1977 with claim
petition no. 717 of 1977 and the order dated 15.12.82

passed in Civil Appeal Nos. 7 and 8 of 1979 passed by the learned Judge, City Civil Court, Ahmedabad. The respondent no. 2 was declared a sick unit and was taken over on 20.8.71 by the Authorised Controller. The petitioner bank filed a claim petition for a sum of Rs. 79,53,797.98 ps. for various amounts outstanding in different accounts i.e. cash credit, hypothecation account, term loan, account no.1, term loan account no. 2, deffered payment, guarantee accounts, deferred payments, foreign import letter of credit etc. Ultimately, the outstanding amount came to Rs. 90,84,307.03 ps. The amount of Rs. 32,29,192.97 ps., another amount of Rs. 10,35,620.26 ps. were admitted in category no. 1(a) of part I of the Second schedule. The Assistant Commissioner of Payments allowed the claim for Rs. 21,22,887.70 ps. out of which an amount of Rs. 18,52,131.50 ps. was to be paid the petitioner Bank. by an order dated 31.8.78. Various documents including agreement of guarantee dated 21.1.72, Agreement of guarantee dated 3.5.73 executed by the Government of Gujarat, Governor of Gujarat executed an agreement of guarantee dated 25.11.1968 and other documents were placed on record by the petitioner bank to show that the liability of the payment of entire amount of the petitioner bank was undertaken by the Authorised Controller. The petitioner filed appeals against the judgment and order of the Commissioner of Payments before the Judge, City Civil Court, Ahmedabad which were dismissed by an order dated 15th December, 1982.

2. This Court in the case of State Bank of India vs. New Manekchowk Spinning and Weaving Mills Company Ltd., and others (Special Civil Application No. 3395 of 1981 decided on today has held that loan means an advance whether of money or in kind on interest made by a money lender and shall include a transaction on a bond bearing interest in respect of post liability when a loan is renewed. It is also held thast even liability of a sick textile undertaking prior to 1st April, 1974 shall be the liability of such owner. The authorised controller has undertaknen the liability of payment of amount of the Bank-petitioners for the pre-take over period unless thast liability is discharged by making payment of loan or in any form with interst the owenr/Authorised Controller/NTC, that liability will continue and thast liability has to be dischasrged by them. The owner/Authorised Controller/NTC are also required to discharge the liabilkity of payment for period post nationalisation period. The liability continued till 1.4.74 when the liability was re-affirmed

prior to the appointed day i.e. 1.4.74 and that liability continues till the loan advanced with interest is discharged. It is not necessary that the loan should be actually given in cash. If the liability has been credited, that would amount to a liability of loan and that will be considered as loan under the Act and that liability will continue till it is discharged. As such, the entire amount of the bank falls under category 1(a) part I of second schedule of the Act and for that amount, the petitioner bank is entitled.

3. Accordingly, this petition is allowed and the orders passed by both the authorities below are quashed and set aside. The respondent nos.3 and 4 are directed to pay the entire amount of the petitioner's claim in each account for which the Authorised Controller and other gave guarantee and assurance for the payment, within three months from the date of the presentation of the certified copy of this judgment. Rule is made absolute accordingly with no order as to costs.

(Kundan Singh,J)

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